

PREFACE

Comment:	Staff Response:
Pg xvii The first sentence of the 2nd full paragraph is unclear. It appears you are trying to describe the purpose of the goals, but the sentence needs to be revised so we can understand it.	Revise to read: The goals are offered “to ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development...” (76-1-106 M.C.A.) and to comply with the overall vision provided in Chapter 1. The policies are suggestions towards reaching those goals.
The phrase “respect the custom and culture of freedom and private property rights (e.g. p xvi, paragraph 3) is overused, and cited as a modifier to too many (but inconsistently) policies Page xviii, third paragraph: “Other impacts, such as traffic,have been seen by residents as negative.” The things you list are negative, aren’t they? Why not just say so?	MCA 76-1-601 requires that this document include community goals and objectives. Therefore it must be an unbiased, objective document that attempts to appease the majority needs and concerns.
The preface is well done and Appendix A, Baseline Analysis offers further information. Please change Preface xvi, Part 2, paragraph 1, last sentence: “However, a delicate balance must be achieved to comply with the requirements of state law, respect the custom and culture of freedom and private property rights, and preserve and protect the abundant natural resources in Flathead County. On Page 3 the importance of our natural resources is included in the “The Seven Elements of the Public’s Vision”: “Properly Manage and Protect the Natural and Human Environment” as it is in Chapter 8 giving support to the need for mention in the above sentence.	Although important, natural resources are only one aspect of the future vision. Revise the last sentence of the first paragraph of Part 2, page xvi to read: “ <i>However, a delicate balance must be achieved to create a clear guide for healthy, positive growth for the future while protecting private property rights.</i> ”
PART 2: Format of the Document Paragraph 1, page xvi – A quote from MCA is given whereby government is given authority over those things listed that belong to the public. The document goes on to say that it is the job of government to balance a private right with a public interest. An interest is not a right. The government should only balance those things which do not interfere with a right. The balance is to not intrude upon a right with an interest. The document continues in its entirety to confuse an interest with a right. Goals and policies, xvii – Goals and policies should be goals and policies that belong to the government. It is not the government’s role to set goals and policies that belong to individuals. As the document continues it begins to set goals and policies that are outside that of public interest. PART 3: History of Land Use and Growth in Flathead County	Staff disagree. “Takings” are legally defined as denial of a reasonable use of land. No policies in the Flathead County Growth Policy deny anyone a reasonable use of land.

<p>A major omission was left out in the inclusion of the Homestead Act. When the federal government relinquished title to real property to individuals in almost all cases it retained no part of ownership nor did it give any part of that ownership to another government entity. Those people receiving title received all the uses and control over that property for their benefit. There were none retained for the benefit of any government. That use and control became commonly called the “bundle of rights” of real property (the physical parcel itself) and the intangible (all the aspects of uses including those currently being utilized and those could be utilized). The exercise of those by the individual in ownership is what is defined as a right. Ownership without the control of those rights has no value. Value comes in the ability to control not the ability to own.</p> <p>When an owner of a property (real or personal) feels another owner of a property (real or personal) is attempting to remove a control, a value or a use from their ownership the dispute is between the owners. It is not the role of government to try to settle disputes before they exist or to try to set up a system whereby that dispute cannot happen. That is not a “public interest”. It does not benefit the public at large nor is it the benefit of all when trying to regulate an interest of one party with another. It is also not a “public interest” for the public to enter into the rights of private property of the individual and remove all or part for the benefit for “what the public wants” without the “public” compensating the individual for that removal. To remove the ability to utilize the inherent “bundle of rights” or any portion thereof without compensation is thievery at its highest, a forced servitude, a removal of value not unlike entering into a savings account or private lockbox and forcibly taking the contents.</p> <p>xviii – “incompatible land use”. A neighborhood grocery store in a residential neighborhood may seem “incompatible” by some but a benefit by others. Who is to say it is “incompatible”? An appointed official? A county commissioner? A residential owner against a neighborhood farmer? Is it incompatible if the majority say it is incompatible against the minority? If that is the case then my ownership of a private property was always subject to someone or some group. Then I really never had ownership. If I voluntarily purchased a property knowing that there were certain “incompatible” uses restricted in my ownership then I have no complaint because I gave up my “inherent” right to a restricted right at the time of purchase. A land owner who decides at this moment to use their property for a residence but could decide to use it for any other use cannot tell his neighbor or get the government to tell</p>	<p>No change needed.</p> <p>“Takings” are legally defined as denial of a reasonable use of land. No policies in the Flathead County Growth Policy deny anyone a reasonable use of land.</p> <p>Staff disagree.</p> <p>See Chapter 2 for further explanation.</p>
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the neighbor that the neighbor cannot use their property for nothing but a residence. That is not the job of a legislative government or an executive branch government. That is the job of a judicial government if there is reason to suspect that the use of one over the other caused commensurable harm or should not be exercised.	Staff disagree.
<p>The Preface is presented in three parts. We would suggest adding a fourth part that presents a general “setting” of the County. This could include the following key elements:</p> <p>Location within the state;</p> <ul style="list-style-type: none"> • General land characteristics (Mountains, forests, lakes, etc); • Size of the county; • Key demographic information; • Predominance of federal ownership; • Description of the incorporated cities; and • Description of the unincorporated cities, such as Bigfork, Hungry Horse, etc. <p>Under Part 2, reference is made to 76-1-106 M.C.A., relating to the “health, safety, and morals” rationale for preparing a growth policy. This linkage is noted throughout the plan and is the basis for goals and policies related to transportation, public facilities and services, land use, and air quality. This linkage to “public health and safety” is less evident when you address goals and policies related to the protection of such resource-based values as “views” or wildlife habitat.</p>	<p>No change needed. See Appendix A.</p> <p>No change needed.</p>
<p>Preface</p> <p>Part 2, page xvi, references “however, a delicate balance must be achieved to comply with state law and respect the custom and culture of freedom and property rights in Flathead County.” This document attempts to achieve such a balance. This statement is contradictory with the many policies that severely restrict rural development, which is a custom and culture of Flathead County.</p>	Per Section 76-1-605(1a), MCA, this is a non-regulatory document. This comment is more relevant to regulatory documents such as the Zoning Regulations, etc.
<p>Text on page xiv and page 127 regarding role of growth policy</p> <p><i>“The growth policy has no regulatory authority and is instead designed as a conceptual foundation for future land use decisions similar to the way a state constitution provides a conceptual framework for state laws.”</i></p>	
<u>Comment:</u> Retain this and similar statements on page 127, but add reference to other related statutes.	
<p>RECOMMENDATION:</p> <p><u>Add Wording or reference to:</u> MCA 76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy</p>	<p>Add to Part 1: Enabling Legislation:</p> <p>MCA 76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by</p>

pursuant to [76-1-601](#) must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

Add Wording from: 76-1-606. Effect of growth policy on subdivision regulations. When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.

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76-1-606. Effect of growth policy on subdivision regulations. When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.